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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/687,897

10/17/2003

Antonella Pesce

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9804

27752 7590 07/05/2007
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EXAMINER

BETTON, TIMOTHY E

ART UNIT

PAPER NUMBER

1614

MAIL DATE

DELIVERY MODE

07/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/687,897

Applicant(s)

PESCE ET AL.

Examiner

Timothy E. Betton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-19 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION

Election of Species

Species Election for a cooling agent, consisting of: ketals, carboxamides, cyclohexyl derivatives, cyclohexanol derivatives, camphor, borneol, eucalyptol, methyl salicylate, tea tree oil, eucalyptus oil, and mixtures thereof.

Applicant is required to elect one specific moiety from the group below.

Constituents such as R 1-3 and C 1-12, etc., must contain one specific group article according to claim 2, wherein the cooling agent is selected from the group consisting of ketals, carboxamides, cyclohexyl derivatives, cyclohexanol derivatives, camphor, borneol, eucalyptol, methyl salicylate, tea tree oil, eucalyptus oil, and mixtures thereof.

Applicant is required upon the election of a specific moiety above, to also an elect specific R and C groups for the specific moiety elected.

Further election of species for article

Applicant is required to elect an article: 1) without a topsheet and backsheet or 2) with a topsheet and backsheet.

Upon the election of an article without a topsheet and backsheet, applicant is required to elect a specific article comprising either of 1) alcohol, 2) ester, or 3) acid. Also, applicant is required to elect a delivery system species: 1) triethyl citrate, 2) acetyl tributyl citrate, 3) triacetyl citrate, 4) O acetyl triethyl citrate, 5) polyethylene glycol and/or propylene glycol.

Further, applicant is required to elect one specific article species comprising: 1) clothing, 2) bandage, 3) thermal pad, 4) acne pad, 5) cold pad, 6) compress, 7) surgical

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pad/dressing, 8) protective bedding cover, 9) gloves, 10) socks, 11) perspiration pad, 12) shoe insole, 13) shirt insert, 14) animal litter, 15) panty liner, 16) feminine napkin, 17) incontinent pad, 18) diaper, 19) tampon, 20) interlabial pad, 21) breast pad, or 22) human or animal waste management device.

Upon the election of an article with a top sheet and back sheet, applicant must elect a specific back sheet species, i.e., 1) an apertured polymeric film, or 2) a 2-dimensional planar apertured film.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Specifically, applicant is required to define. Currently, claims 1 are generic to the above electable species

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after

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the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

Should the applicant traverse on grounds that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is so. In either instance, if the Examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Election/Restrictions Proper

MPEP §809.02(d) states “[w]here only generic claims are presented, no restriction can be required except in those applications where the generic claims recite such a multiplicity of species that an unduly extensive and burdensome search is necessary.” In this instant case, the claims cited are of such a multiplicity of species that an unduly extensive and burdensome search would be necessary if all of the claimed species were to be examined together. A cloth, comprising a water-insoluble nonwoven, which has been moistened with an impregnation solution comprising an oil-in-water emulsion 5 having a viscosity of less than 2000 mPa.s, and comprising: one or more partially neutralized glyceride esters selected from the group consisting of monoglyceride and diglyceride esters of saturated fatty acids with citric acid and one or more fatty alcohols selected from the group consisting of branched 10 and unbranched ethyl alcohols with 12 to 40 carbon atoms.

The present claims are directed toward a present claim 1 and claims dependent from claim 1 for example disclose a multiplicity of active drugs and derivatives thereof. It would, therefore, present a serious search burden to the Examiner if all claimed species were searched together due to the multiplicity of varying susceptibilities, properties and distinct properties, if all of the species were examined together.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy E. Betton whose telephone number is (571) 272-9922. The examiner can normally be reached on Monday-Friday 8:30a - 5:00p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on (571) 272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TEB

Ardin H. Marschel 6/25/07
ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER